

EXHIBIT 55

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: DA VINCI SURGICAL ROBOT) Lead Case No.:
ANTITRUST LITIGATION) 3:21-cv-03825-VC

_____)
)
THIS DOCUMENT RELATES TO:)
ALL CASES)

_____)
VIRTUAL VIDEOCONFERENCE VIDEO-RECORDED DEPOSITION OF
LOREN K. SMITH, PH.D.

Wednesday, February 22, 2023
Remotely Testifying from Washington, D.C.

Stenographically Reported By:
Hanna Kim, CLR, CSR No. 13083
Job No. 5754429

1 has to purchase instruments and accessories
2 separately from the actual da Vinci robot, right?

3 "THE WITNESS: Over time, after they've
4 made the initial da Vinci purchase, they're --
5 ongoing they're purchasing instruments to be used
6 with the system.

7 "Question: So the purchase of" the --
8 "those ongoing instruments, you're not buying an
9 additional robot each time, right? You're just
10 buying new EndoWrists for the robot that you already
11 own; is that right?

12 "Answer: You're not buying a robot each
13 time, correct." [As read]

14 Do you have any reason to dispute the
15 testimony there from Mr. Vavoso in Note 347 of
16 Professor Elhauge's report?

17 A. I -- I don't think it's inconsistent with
18 what I just said, which is they agreed to purchase
19 the EndoWrists over time at the time that they
20 purchased the da Vinci Surgical System, including
21 the platform and system servicing.

22 Q. But they don't know all the EndoWrists
23 they're going to need when they first make that
24 first purchase; right?

25 A. I think that's why the contract is

1 designed that way. They -- Intuitive is -- in some
2 sense what Intuitive is doing as a matter of
3 economics is sharing some risk of demand with the
4 customer.

5 They're saying, "You don't have to be able
6 to predict perfectly how many surgeries you're going
7 to do over the next five years. You can purchase
8 instruments from us on an ongoing basis, and that
9 will be more efficient for us both." And that's the
10 agreement they come up with.

11 Q. Now, revenues from those what you call
12 sales of EndoWrists that occur over time, are
13 recorded in a separate database from the robot
14 sales; correct?

15 A. I have seen test- -- either testimony or
16 documents to that effect.

17 Q. Well, you've seen the data; right?

18 A. I have seen that data. Yes, I -- I -- I
19 or my team have reviewed all of that data. And my
20 understanding is that the in- -- instrument sale
21 data are a -- a -- a dataset in their own right.

22 Q. And the da Vinci robot data is also a
23 separate dataset in its own right; right?

24 A. It can be -- let's put it this way: It
25 can be analyzed separately. I -- I -- my team at my

1 direction has analyzed those data. It would be --
2 it would be my understanding that they are different
3 datasets, but I'd want to confirm.

4 I think it's in the table notes of my --
5 the table -- the figures in my report. So we could
6 confirm that real quick if we wanted to.

7 Q. Well, let's confirm in your report on page
8 A-1. Okay? That's the first page of your, I guess,
9 Appendix A. If you can turn to that, it's towards
10 the back of your report right after your signature.

11 A. Yeah.

12 Q. Are you with me?

13 A. Yeah.

14 Q. So A-1, Number 1 at the top, "Intuitive's
15 System Sales Transactions Data."

16 Do you see that?

17 A. Yes.

18 Q. And that's --

19 A. Yeah, this -- we don't have to go through
20 it all. This refreshes my memory. I -- they --
21 they -- the -- I remember these datasets now.

22 So, yeah, they have three -- these three
23 datasets for system sales, IA, and procedures.

24 Q. And they list those separate revenues in
25 Intuitive's 10-K; right?